



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN, TEXAS**

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ATTORNEY GENERAL

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June 18, 1948

Honorable Lon Alsup  
Executive Secretary-Director  
State Commission for the Blind  
Land Office Building  
Austin, Texas

Opinion No. V-609

Re: Authority of State Commission  
for the Blind to accept land  
as a donation; to pay taxes  
thereon; to sell; and disposi-  
tion of proceeds of such sale.

Dear Sir:

Your letter requesting an opinion reads in  
part:

"The laws . . . in behalf of the  
State Commission for the Blind permit  
the said Commission to accept donations.  
Mr. Ben M. Beaver . . . desires to donate  
to the State Commission for the Blind ap-  
proximately 17 acres of land. . .

"Mr. Beaver proposes to give a deed  
to this land to said Commission with the  
specific agreement that all mineral rights  
are to be reserved to him and his wife un-  
til their death. Then, such mineral rights  
would become the property of the Commission.

"In view of the statement made above,  
please advise this department if it would  
be advisable for this agency to accept this  
donation. Also advise if this land was ac-  
cepted by this agency, if it would be ex-  
empted from county and state taxes. If it  
were not exempted, would this agency be re-  
sponsible for the taxes or would such taxes  
be paid by the Legislature of the State of  
Texas.

"It is also to be taken into consideration the fact that if the Commission for Blind were to accept this donation of land that it is to be used for the development of a rural project for blind persons. If it is found over a reasonable period of time that such a project is not feasible, then in that event, the Commission for the Blind or the the State of Texas would be permitted to sell such land and the proceeds of the sale of such property would go to the State Commission for the Blind to be used in developing the business enterprises program for the blind."

Sec. 7 of H. B. 347, Ch. 241, p. 374, Acts of 1945, 49th Legislature is codified as Art. 3207c, Sec.7, V. C. S., and reads as follows:

"Gifts. The Director is hereby authorized and empowered, with the approval of the Commission, to accept and use gifts made unconditionally by will or otherwise for carrying out the purpose of this Act. Gifts made under such conditions as in the judgment of the Commission are proper and consistent with the provisions of this Act may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift."

It is our opinion that "gifts" as used in Article 3207c, Sec. 7, V.C.S., is broad enough to include land.

Your letter states that this land, if accepted, would be used for the development of a rural project for blind persons. It is further noted that the deed reserves a life estate in the mineral rights to the grantor and his wife.

In our opinion, a reservation of a life estate in the minerals to the grantor and his wife is "proper and consistent" with the provisions of Art. 3207c, V.C.S. The reservation of the minerals in the land to the grantor and his wife for life may conceivably interfere with the future use of the land for the development of a rural project for the blind, if there is any substantial oil and gas development. In such event, however, the land could be sold without affecting the mineral rights of

the grantor and his wife.

If the Commission accepted the donation of this land, would it be tax exempt? The State Commission for the Blind is an instrumentality of State government and possesses only such powers as has been conferred on it by the Constitution and Legislature. We do not find any statute or article of the Constitution that permits the payment of taxes by the State Commission for the Blind; therefore, it is our opinion that such property interest conveyed to the said Commission would be exempt from State and County taxes.

The question of whether or not such property could be sold was answered in Attorney General's Opinion No. 0-2355 as follows:

"Your question is answered, then, by determining the character of the grant. It is clear that if it is public money it may not be expended except upon a specific appropriation made therefor by the Legislature. Section 6, Article VIII, Constitution of Texas; *McCombs v. Dallas County* (CCA, 1940) 136 S. W. (2) 975. On the other hand, if the gift constitutes a trust fund, and we hold under the specific facts given, that it does, it may be expended by your Commission as trustee under any lawful conditions imposed by the donor of the grant consistent with the Commission's duties under Art. 3207a, V.C.S. Such funds have no place in the State Treasury and Section 6 of Article VIII of the Constitution has no application. Under such circumstances, moreover, reasonable prudence would dictate that all such moneys received be placed in a private bank account."

It is to be noted that Section 7 of Article 3207c, V. C. S., authorizes the Director "to accept and use gifts," but the Commission must first approve the gift. The conveyance should be made to the Director of the State Commission for the Blind and his successors in office as trustee. It is also to be

noted that the gifts "shall be held, invested, reinvested and used in accordance with the conditions of the gift."

SUMMARY

The Director of the State Commission for the Blind, with the approval of the Commission, may act in the capacity of a trustee and accept gifts of land with mineral rights reserved in the grantor and his wife for life, and the interest in the land that is accepted will then be exempt from State and County taxes. Such land may be sold and the proceeds of the sale held, invested, reinvested and used for vocational rehabilitation of the blind as authorized in Article 3207c, V. C. S.

Yours very truly

ATTORNEY GENERAL OF TEXAS

*Robert W. Spence*

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RWS:bt

APPROVED

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